

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

-vs-

FEDERICO GONZALEZ CRUZ,

Defendant and Appellant.

NO. 21419

OPENING BRIEF
OF
FEDERICO GONZALEZ CRUZ

APPEAL FROM
UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
HONORABLE ALFONSO J. ZIRPOLI, JUDGE

FEDERICO GONZALEZ CRUZ
P. O. BOX 107
Tehachapi, California 93561
In Propria Persona for Defendant-
Appellant Federico Gonzalez Cruz

FILED

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5 THE PEOPLE OF THE STATE OF CALIFORNIA,)
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8 FEDERICO GONZALEZ CRUZ)
9 Defendant and Appellant.)
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11 Appeal from the United States District Court For The Northern
12 District of California, Southern Division, Honorable Alfonso
13 J. Zirpoli, Judge
14
15 - - - -

16 OPENING BRIEF

17 OF

18 FEDERICO GONZALEZ CRUZ
19 - - - -

20 TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES
21 OF THE UNITED STATES COURT OF APPEALS, FOR THE NINTH CIRCUIT
22 COMES NOW the Defendant and Appellant,
23 FEDERICO GONZALEZ CRUZ, and files this Opening Brief.
24
25
26

STATEMENT OF THE PLEADINGS AND FACTS

That this appeal has merits and under the provisions of the rules and regulations governing the District Courts and the Courts of Appeals, this court has jurisdiction under "(28 U.S.C.A., #2243) to review this case. That the facts in this case shows that a constitutional issues under Escobedo, exist in this appeal. Re: Escobedo v. Illinois, 378 U. S. 478 (1964). The remaining allegations of this appeal has sufficient evidences to raise a federal constitutional issue under the provisions of the United States Constitution specially the 5th and 6th Amendment as make obligatory upon the states by the 14th Amendment of the United States Constitution. That this defendant was not given a fair trial as guarantee by the United States Constitution and that this defendant was not represented by counsel during his trial constitutes another violation of the right to counsel guarantee by the United States Constitution. That the facts in this case shown that this court has jurisdiction because this case show that a constitutional issue under Gideon, exist in this appeal. Re: Gideon vs Wainright, 372 U. S. 335. That this defendant was interrogated by the police without the assistance of counsel and without being notified of his right to counsel and inflammatory statements were used again him during the trial.

PRELIMINARY STATEMENT

The defendant in this case and appellant was charged by an Information filed by the District Attorney of the County of Los Angeles with the following offenses:

In Count I, the crime of Conspiracy to commit grand theft, in violation of # 182, Subds. 1 & 4, Penal Code, State of California, in that the defendant and appellant Federico Gonzalez Cruz did, on or about the 22nd day of July, 1960, conspire, combine, confederate and agree with Roland Causey and with unknown persons to commit Grand Theft, to cheat and defraud by criminal means, and to obtain money and property by false pretenses and by false promises, with fraudulent intent not to perform such promises, but thereafter, and in pursuance of said conspiracy, combination, confederacy and agreement, and to carry out the objects and purposes of the same, the defendant committed certain overt acts. Thereafter, the overt acts are alleged in the Information (CT 1-4).

In Count II, the defendant Cruz was with Causey charged with Grand Theft, in violation of # 487, Subd. 1, Penal Code, in that on or about the 25th day of July, 1960, they obtained two diamond rings of the value of Ten Thousand Dollars and two watches of the value of Seventeen Hundred Dollars, all of the value of Eleven Thousand and Seven Hundred (\$11,700.00) Dollars, the personal property of one Charles DeMaio. (CT 5).

1. In Count III, they are charged with violation
2. of # 487, Subd. 1, Penal Code, Grand Theft, in that
3. they did take Five Thousand Dollars in money, the personal
4. property of Hill's Acceptance Corporation and Melvin B.
5. Rogow.

6. In Count IV, defendants Causey and Cruz are
7. charged with Grand Theft, in violation of # 487, Subd. 1,
8. Penal Code, in that on or about September 29, 1960, they
9. did take Five Thousand Dollars in money from the Realty
10. Capital Company and Leon Lapin (CT 7).

11. In Count V, defendant Cruz is charged with having
12. obtained, in violation of # 487, Subd. 1, Penal Code of
13. California, Grand Theft, Seven Thousand Two Hundred Dollars
14. in money, the personal property of Michael Schiller (CT 5-
15. 8).

16.
17. To the indictment, each of the defendants entered
18. pleas of "Not Guilty." (CT 10)

19. The trial was an extended one with a jury. Both
20. defendants-appellants represented themselves at the trial
21. without counsel. At the conclusion of the trial, the
22. defendants were convicted; Causey was convicted of con-
23. spiracy to commit grand theft as charged in Count I; Cruz
24. was convicted of conspiracy to commit grand theft as
25. charge in Count I; Causey was found guilty of grand theft
26. in violation of #487, as charged in Count II; Cruz was

1. found guilty of grand theft in violation of # 487, Secd. 1,
2. Penal Code, as charged in Count II of the information;
3. Causey was found not guilty of grand theft as charged in
4. Count III; Cruz was found guilty of grand theft as charged
5. in Count III; Causey was found not guilty of grand theft
6. as charged in Count IV; Cruz was found guilty of grand
7. theft as charged in Count IV; Cruz was found guilty of
8. grand theft as charged in Count V (CT 67,68).

9. Motions for new trial were made and denied (CT
10. 73); Cruz' motion for new trial was denied (CT 82).

11. Cruz was sentenced as to Counts I and II to the
12. penitentiary to run consecutively; on Counts III, IV and
13. V to run concurrently with Count II (CT 83).

14. Thereafter, a Notice of Appeal was duly filed
15. and the case. (CT 84).

17. STATEMENT OF THE CASE

18. During my trial I have no Attorney in violation of my
19. Constitutional Rights to counsel. Denial of the assistance
20. to counsel is in violation of the Sixth Amendment of the
21. Constitution as made obligatory upon the State by the Fourteen
22. Amendment, Gideon vs Wainright, 372 U. S. 335.

23. At the time of my arrest when I was brought to the Los
24. Angeles Police Headquarters I requested permission to call an
25. Attorney before given any statements and the Police Officer Hull
26. denied me the right to make a telephone call to an attorney. I

1. try for about four times for permission to get to see an attorney
2. and the Police denied me this right guarantee by the Constitution.
3. Miss Helene P. Reichl was present when the right to counsel was
4. denied to me. During the trial she testified as follow in Volume
5. 36, Reporter's Transcript, pages 4929, 4930, August 14, 1961.
6. Direct Examination of Helene P. Reichl.
7. Q Just before you left, was there a conversation before you left?
8. A Yes
9. Q Who was there?
10. A Lieutenant Hull, Dr. Cruz and I.
11. Q And what was said in this conversation?
12. A Well, Dr. Cruz wanted to call an attorney.
13. Q And was Dr. Cruz able to call an attorney that day?
14. MR. FAGAN: That calls for a conclusion.
15. MR. CRUZ: I will withdraw it and will reframe it.
16. Q BY MR. CRUZ: Did you see Dr. Cruz making a telephone conver-
17. sation that day?
18. A No
19. Q And did you know who did not let Dr. Cruz make a telephone
20. conversation that day?
21. A The Police
22. Q And who was representing the police that day?
23. A. Lieutenant Hull
24. Q Did Lieutenant Hull recommend anything that day in your
25. presence?
26. A Yes

1. Q What did he recommend?

2. A Well, Dr. Cruz wanted to get out on a writ that night, so
3. Luietenant Hull told me to go to the bonding agency, Schwind.

4. Q He told you to go there?

5. A Yes

6. Q Is there anything else you remember that happened that day?

7. A Yes

8. Q Were any threats made against you that day?

9. A Yes, Luietenant Hull threatened me that I might be deported.
10. He said it many, many times, and he also said that under no
11. circumstances I should get in touch with an attorney and that
12. never shall see Dr. Cruz again, and this one time I could be
13. excused, because I didn't know were I was standing or in what
14. I was in, but the next time that they see me with Dr. Cruz again,
15. then it would be unforgivable and then I would, for sure land in
16. jail too.

17. Q Now, was this at the police station that day?

18. A Yes

19. Q And after that day, did Luietenant Hull threaten you on any
20. other occasion?

21. A Well, it was the deportation question, I was scared.

22. As the court can see in the above testimony that I was
23. denied of the right to counsel and I was not allow to make a phone
24. call for getting in touch with an attorney and even my friend that
25. could get me an attorney was threaten and scared from do do by
26. the police officers. Effective representation by counsel at the

1. only stages when legal aid and advise would help him, Massiah vs.
2. United States, ____ U. S. _____. The guiding hand of counsel
3. was essential to advise petitioner of his rights in the delicate
4. situation, Powell vs. Alabama, 337 U. S. 45, 69.

5. I was brought before Officer Lawrence W. Sloan, Examiner of
6. questioned documents, employed by the Los Angeles Police Depart-
7. ment.. I requested permission to call for counsel to assist me
8. before I make any statement and Mr. Sloan denied me assistance
9. of counsel, instead it went to threat me with additional charges
10. and putting my family and friend Miss Reichl in jail and he went even
11. to the extent of showing me, Miss Reichl in the next room, after all
12. this threat and after he told me that this statement will help
13. me to clear myself up I give a statement and I signed and I
14. keep signing a great number of other documents. That Mr. Sloan never
15. advise me of my constitutional rights to counsel and to remain
16. silence, instead used all his power to threat me into signing
17. a confession. The moment a person becomes a prime suspect in
18. an investigation, he has the right to consult with counsel and
19. no statement at all prior to counsel can be admitted as evidence,
20. Escobedo vs. Illinois, 378 U.S. 478 (1964). The result to produce
21. upon his mind that fear that if he remained silent it would be con-
22. sidered an admission of guilt, Bram vs. United States, 168 U.S. 532,
23. 562. It seems manifested to us from the indisputed evidence and
24. the circumstances surrounding defendant at the time of statement
25. and shortly prior thereto that the defendant understood he would
26. be permitted to go home if he gave the statement and would be

1. granted an immunity from prosecution, Escobedo vs. Illinois, 28
2. Ill. 2nd. 41, compare Lynam vs. Illinois, 372 U. S. 528. It was
3. stage as critical as was the arrangement, Hamilton vs. Alabama,
4. 368 U. S. 52. In a recent case entitled the People vs. Matterson,
5. 61 A. C. _____, 61 Cal. 2d _____, 1964, the same officer Mr.
6. Sloan was reprimended for using this same tactics in said case and
7. the case was reversed by the California Supreme Court.

8. During my trial Mr. Sloan was called as the People's
9. witness and he testified as follow as recorded in Volume 27,
10. Reporter's Transcript, pages 3652, 3653 and 3654, Direct
11. Examination By Deputy District Attorney Fagan; Line No. 16.

12. Q BY MR. FAGAN: Thereafter, did you compare that siganture with
13. certain other documents?

14. A Yes I did

15. THE COURT: What did he answer when you asked if it was his
16. signature?

17. THE WITNESS: He said, "Yes, it is."

18. THE COURT: When was that

19. THE WITNESS: I don't recall the date, your Honor, I think I have
20. some other documents in this case, initiated and dated. I did not
21. initial or date this one in particular. This, among other docu-
22. ments, were in my office, as well as Mr. Cruz, the defendant. It
23. is now several months ago. It seems to me that it goes back to
24. the very early part of this year. I don't quite remember, but
25. these documents, Exhibit No. 37, I did show to the defendant and
26. asked, "Is this your signature ?"

1. Independent of one another and collectively, I asked that and he
2. said, "Yes" and that is how his initials happened to get on the
3. paper.

4. I asked if he would initial them as documents that I had shown
5. him and documents that he has seen, and he readily acquiesced.

6. MR. CRUZ: To which I object and ask the answer be stricken unless
7. this police officer can prove here with other documents that this
8. is the signature of Dr. Cruz. This is hearsay all the way. He
9. doesn't even know when it was done.

10. THE COURT: Overruled, The answer may stand.

11. "These initials that you refer to are what.

12. THE WITNESS: "G.C."

13. THE COURT: Now, will you point out the signature when you asked
14. if it was his signature?

15. THE WITNESS: This one on the short form, a portion of Exhibit
16. No. 37, and this in the lower right portion of the long form.

17. THE COURT: Now, will you point out the initials that he put on
18. after you asked him to put them on ?

19. THE WITNESS: "G. C." in the lower right hand corner of the short
20. portion of Exhibit No. 37 and "G. C." in the lower right hand
21. corner of the long form of Exhibit No. 37.

22. THE COURT: Do that so these juror or anybody can see what we are
23. doing. Hold it up so we know that you are referring to.

24. The above testimony was a direct violation of my constitutional
25. rights because, No statement at all prior to counsel can be
26. admitted as evidence, Escobedo supra., People Vs Dorado supra.

1. Confessions have often been extorted to save law enforcement officials
2. the trouble and effort of obtaining valid, independent evidence,
3. Haynes vs. Washington, 373, U. S. 503, 519.

4. While in custody at the Los Angeles County Jail, Hall of
5. Justice, I was questioned by Luietenant Hull and Mr. Herman F.
6. Roth, a deputy Real Estate Commissioner, assisting in the inves-
7. tigation of the case, about the case. I told them I wanted to see
8. my counsel and the police officer told me that it was not necessary
9. and that I should better talk nor or additional charges were
10. going to be filed against me. Luietenant Hull told me that he
11. wanted this information to clear me up and to arrest Mr. Roland
12. Causey. After all this threats and talk I give then a statement
13. or confession. That at no time did these officers advise me of
14. my constitutional rights to counsel and to remain silent, and that
15. this constitute a direct violation of my constitutional rights to
16. counsel. Every state of denial of a request to contact counsel
17. (is) an infringement of the Constitutional Rights, without regard
18. to the circumstances of the case, Crooker vs. California, 337,
19. U. S. 433, See i.g. Escobedo supra, Gideon Supra.

20. During my trial Mr. Roth was called as the People's
21. witness and he proceed to use the statement or confession that he
22. took from me why at County Jail. He testified as follow as
23. recorded in Volume No. 27, pages 3693 through 3695, Reporter's
24. Transcript of July 31, 1961. Direct Examination by Deputy District
25. Attorney Fagan: Line 18-
26. Q BY MR. FAGAN: Did you have a conversation with the defendant Cruz

1. A Yes
2. Q And when did that conversation take place?
3. A May I refresh my recollection on that?
4. Q Do you have some memorandum on that subject matter?
5. A Yes, I do
6. Q And has that already been shown to you and given a number?
7. A No. 93
8. Q And were these notes that you took following your conversation
9. or during your conversation with the defendant Cruz?
10. A Yes
11. THE COURT: You laid your foundation on that perfectly. You
12. found out that it was a statement from Mr. Cruz.
13. MR. FAGAN: I did all right, except I was using Causey instead
14. of Cruz, your Honor.
15. Q BY MR. FAGAN: Now, No. 93 is a typed up summary of the notes
16. that you had in connection with the conversation you had with
17. Mr. Cruz, is that right?
18. A Yes
19. Q Done at a time when it was fresh in your mind?
20. A Yes
21. Q And do you believe that the matter recited there in are an
22. accurate description of the conversation had with Mr. Cruz.
23. A Yes
24. Q All right. Do you feel you need it to refresh your recollec-
25. tion from time to time for the sake of accuracy?
26. A Yes

1. Q All right. Use it if you have to then, but only if you have to.
2. When did you have a conversation with the defendant Cruz.
3. A On November 23rd.
4. Q of 1960?
5. A Yes
6. Q Where did the conversation take place?
7. A In the Hall of Justice
8. Q And were Mr. Cruz's statements freely and voluntarily made?
9. A Yes
10. Q Who was present during the conversation you had with Mr. Cruz?
11. A Lt. Hull, Mr. Cruz, and myself.
12. Q Will you relate what was said by you and Lt. Hull and what was
13. said by Mr. Cruz?
14. The witness then went to give detail of all the information in
15. the statement or confession given by the defendant in violation
16. of my constitutional rights (RT 27)
17. The defendant was denied a fair trial guaranteed to him
18. by reason of the misconduct of the District Attorney, which I
19. urge was sufficiently aggravated to command a reversal of the
20. judgement and orders appealed from herein. The trial was
21. extended; there was such repetition; considerable delay; and
22. a summary of the facts has been prepared on the attached Exhibit
23. B (which accompany the Petition #43329 to the United States
24. District Court, Northern District of California) and I respectfully
25. ask the Court to adopt the points, the summary of evidence, and
26. the authorities, cited in Exhibit B, and I refer to them and

1. make them a part of my contentions here by reference, and
2. respectfully ask the Court to adopt them insofar as they are
3. applicable to the appeal.

4. Defendant was given double punishment in violation of
5. Section 654, California Penal Code and the Constitution of the
6. United States. Said Judgement reads in pertinent part:

7. "Sentences as to Counts 1 and 2 are ordered to run
8. Consecutively. Sentences as to Counts 3, 4 and 5 are
9. ordered to run concurrently with Count 2."

10. (Superior Court File No. 237700 for the County of
11. Los Angeles.)

12. At the time of the imposition of said sentence
13. on October 23, 1961, the Honorable Samuel L. Blake stated:

14. "Counts 1 and 2, they will run consecutively.
15. Counts 3, 4 and 5 to run concurrent with Count 2."

16. "I divided them up. I believe they are one offense
17. in that connection, and I have run them that way,
18. giving him the benefit of running concurrently, the last
19. four Counts, which, I think, is part of the same trans-
20. action. I think he is entitled to that."

21. (R.T. of sentencing - Superior Court File No. 237700 for
22. the County of Los Angeles)

23. As the result of the above sentence defendant has to serve
24. 20 years for the same crime because as the Judge stated above
25. they are one offense in that connection and the conspiracy
26. involves the same overt acts as the grand theft, being double jeopardy

1. REASONS FOR REVERSAL

2.
3. I

4. THE DEFENDANT WAS NOT REPRESENTED BY COUNSEL
5. DURING THE TRIAL.
6.

7. II

8. DEFENDANT WAS NOT ALLOWED TO CONTACT COUNSEL
9. DURING HIS DETENTION, INFLAMMATORY STATEMENTS
10. WERE TAKEN FROM HIM WITHOUT THE ASSISTANCE
11. OF COUNSEL, STATEMENTS WERE USED DURING THE
12. TRIAL, AND DEFENDANT WAS NOT ADVISED OF HIS
13. RIGHTS TO COUNSEL AND REMAIN SILENCE.
14.

15. III

16. THE DEFENDANT WAS DENIED THAT FAIR TRIAL
17. GUARANTEED TO HIM BY REASON OF THE MISCONDUCT
18. OF THE DISTRICT ATTORNEY, WHICH WE URGE WAS
19. SUFFICIENTLY AGGRAVATED TO COMMAND A REVERSAL
20. OF THE JUDGEMENT AND ORDERS APPEALED FROM HEREIN
21.

22. IV

23.
24. THE DEFENDANT WAS GIVEN DOUBLE PUNISHMENT FOR
25. THE SAME CRIME WHILE CO-DEFENDANT RECEIVED SINGLE
26. PUNISHMENT IN VIOATION OF HIS CONTITUTIONAL RIGHTS

ARGUMENT

I

DEFENDANT WAS NOT REPRESENTED BY COUNSEL
DURING THE TRIAL

Defendant was a layman of the law and did not understand well court proceedings and at the time he waived his right to counsel, he did not know what he was doing. When his attorney asked for permission to be realeased from the case he got more confussed, his attorney prior to his motion for withdrawal had spoken to him and threaten him about sure imprisoment if he does not releaded him from staying in the case. Defendant had given all his money to this attorney to represent him and was not financially capable of re-hiring another attorney and with the threats from his attorney confussing him, he went along with the withdrawal of his attorney from the case, however, the Judge was in error when he permitted the removal of my attorney from the case because after all he was retained already for this case and was the attorney of records. Defendant should have given another attorney to represent him or the Judge should not have allowed this attorney from withdrawn from the case. That this case was a very confussed one and another attorney coming into the case which had make it more delate and the Judge had refused a continuance of the case which was one of the reasons why my

1. attorney wanted out because the District Attorney keep saying about
2. how many months this case was going to last. I argued that this
3. was the reason the Judge allowed my attorney to withdraw from the
4. case. If defendant had been represented by counsel the outcome
5. of the case will probably being different and do to the court error
6. the defendant was improper represented and lost the case.

7. "Denial of the assistance to counsel is in violation
8. of the Sixth Amendment of the Constitution as made obligatory
9. upon the State by the Fourteen Amendment, Gideon vs Wainright,
10. 372 U.S. 335."

11. "In all criminal prosecutions, the accused shall
12. enjoy the right to a speedy and public trial, by an imp-
13. arcial jury....., this amendment also guarantees that
14. the defendant shall have a fair trial and be represented
15. by counsel at all stages of proceedings." Amendment VI
16. to the Constitution of the United States.

17. "It is obligatory made upon the States to support
18. all the amendments and the Constitution of the United
19. States, Amendment XIV to the United States Constitution."

21. II

22. DEFENDANT WAS NOT ALLOWED TO CONTACT COUNSEL DURING HIS
23. DETENTION, INFLAMATORY STATEMENTS WERE TAKEN FROM HIM WITHOUT
24. THE ASSISTANCE OF COUNSEL, STATEMENTS WERE USED DURING THE
25. TRIAL, AND DEFENDANT WAS NOT ADVISED OF HIS RIGHT TO
26. COUNSEL AND REMAIN SILENCE.

1. Defendant was not given the rights guarantee to him by
2. the United States Constitution as you can see by the testimony
3. of Helene P. Reichl (RT 36). When defendant tried to contact
4. counsel police officers denied this right and not even a phone
5. call was allowed. Miss Reichl was amornished about getting in
6. touch with an attorney and threaten if she did so. (RT 36) That
7. the police tried everything in their power to prevent defendant
8. from getting intouch with an attorney to protect his rights. That
9. officer Sloan used threats and police trickery to get a confession
10. from the defendant (RT 27). That during the trial Mr. Sloan
11. produced in open court the papers that he made the defendant signed
12. under threat and Mr. Sloan demostrated in open court were defendant
13. had put his signature admitting guilt in Exhibit No. 37 and the
14. Judge requested to show this exhibit to the juror (RT 27). That
15. Mr. Roth produced in open court the statement or confession that
16. they extorded from the defendant without the assistance of counsel
17. and under threats and was marked Exhibit No. 93 and admitted in
18. evidence and that Mr. Roth was allowed to use the statement to
19. refresh his recollection in open court and in front of the jury. (RT
20. That this statement was not taken voluntarily but under threats of
21. the police officer Hull and Mr. Roth and that these two officers
22. refused to let defendant to get intouch with his attorney that was
23. in the building during this interrogations. That using Exhibit
24. No. 37 in open court was a violation of my constitutional rights
25. and the court was in error when allowed this to take place. That
26. Officers Hull, Sloan and Roth failed to advise defendant of his

1. constitutional rights to counsel and to remain silence at any time
2. during his interrogations in violation of defendant's constitutional
3. rights as guarantee to him by the Constitution of the United States.

4. "Effective representation by counsel at the only stages
5. when legal aid and advise would help him, Massiah vs United
6. States, _____ U.S. _____."

7. "The guiding hand of counsel was essential to advise
8. petitioner of his rights in the delicate situation,
9. Powell vs Alabama, 287 U.S. 45, 69."

10. "The moment a person becomes a prime suspect in an
11. investigation, he has the right to consult with counsel
12. and no statement at all prior to counsel can be admitted
13. as evidence, Escobedo vs Illinois, 378 U. S. 478 (1964)."

14. "The result to produce upon his mind that fear that
15. if he remained silent it would be considered an admission
16. of guilt, Bram vs United States, 168 U. S. 532, 562."

17. "It seems manifested to us from the indisputed evidence
18. and the circumstances surrounding defendant at the time
19. of statement and shortly prior thereto that the defendant
20. understood he would be permitted to go home if he gave the
21. statement and would be granted an immunity from prosecution,
22. Escobedo vs Illinois, 28 Ill. 2nd. 41, compare Lynum vs
23. Illinois, 372 U.S. 528."

24. "It was stage as critical as was the arrangement,
25. Hamilton vs Alabama, 368 U. S. 52."

26. "Confessions have often been extorted to save law

1. enforcement officials the troubles and effort of obtaining
2. valid, independent evidence, Haynes vs Washington, 373,
3. U. S. 503, 519."

4. "Every state of denial of a request to contact counsel
5. (is) an infringement of the Constitutional Rights, without
6. regard to the circumstances of the case, Crooker vs California,
7. 337, U. S. 433."

8. "Confession taken from defendant during period of
9. detention prior to indictment after attorney has been
10. requested and denial access to him could not be used
11. against him in a criminal trial, People vs Donovan, 13
12. N. Y. 2nd. 148."

13. "It seems manifest to us from the undisputed
14. evidence and the circumstances surrounding defendant at
15. the time of statement and shortly prior thereto that the
16. defendant understood he would be permitted to go home if
17. he gave the statement and would be granted an immunity
18. from prosecution, Escobedo vs Illinois, 28 Ill. 2nd. 41,
19. compare Lynum vs Illinois, 372 U.S. 528."

20.
21. FII

22. THE DEFENDANT WAS DENIED THAT FAIR TRIAL GUARANTEED TO HIM
23. BY REASON OF THE MISCONDUCT OF THE DISTRICT ATTORNEY, WHICH
24. WE URGE WAS SUFFICIENTLY AGGRAVATED TO COMMAND A REVERSAL
25. OF THE JUDGEMENT AND ORDERS APPEALED FROM HEREIN.
26.

1. That the District Attorney taking advantage that the
2. defendant was acting in proper abused the discretion of the
3. court and subjected the defendant to many hours of trickery and
4. did not acted as an opposing counsel at all. The District
5. Attorney told the defendant to "shut up" three times in open
6. court in the present of the jury and used all kind of language
7. in refering to the defendant during the trial and his conduct
8. was very unprofessional like and was cited in contempt of court
9. by the presiding judge. That the District Attorney discriminated
10. against the defendant during the trial producing great embarrassment
11. before the jury at all time preventing the defendant from getting
12. a fair trial. The trial was extended; there was much repetition;
13. considerable delay; and all because of the misconduct of the
14. District Attorney. A summary of the evidence has been prepared
15. by the defendant in Exhibit B #43329 District Court which I
16. respectfully ask to adopt. It is lengthy and, in the interest
17. of brevity, I respectfully asks permission of the Court to adopt
18. it as being a summary of the evidence on behalf of the Appellant
19. Cruz.

20. IV
21.

22. THE DEFENDANT WAS GIVEN DOUBLE PUNISHMENT FOR THE SAME
23. CRIME WHILE CO-DEFENDANT RECEIVED SINGLE PUNISHMENT
24. IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.
25.

26. In passing sentence the Judge gives the defendant his

1. time running consecutively for the crime of conspiracy and grand
2. theft which were the same crime with the same overt acts and both
3. related to each other and part of the same transaction. (C. T. 83
4. sentencing - Superior Court File No. 237700 for the County of Los
5. Angeles) That the co-defendant Causey received a concurrently
6. sentence for the same crime as defendant and that the court was
7. in error and discriminated against defendant and violated the
8. statues of unequal punishment of the Constitution of the United
9. States for the same crime. (R. T. sentencing - Superior Court
10. File No. 237700 for County of Los Angeles, Defendant Causey) (CT 82)

11. "Where there are other and additional objectives of a
12. of a conspiracy which are not charged as seperate substantive
13. offenses, sentences imposed as to both the conspiracy and the
14. substantive offenses do not violate the double punishment concept
15. precluded by Section 654 of the Penal Code."

16. "Though one substantive crime charged against the prisoner
17. (Count V of Information) was not alleged or proved to be an
18. objective of the conspiracy and was charged only as to the
19. defendant and not as to the co-defendant, no objectives of the
20. conspiracy were either alleged or proved which were not also
21. charged as substantive offenses, People vs Causey, 220 CA2d 641,
22. 34 CalRptr 43." (1964)

23. "Where, however, the conspiracy is not shown to have
24. any objective apart from that involved in the substantive
25. charges, double punishment is forbidden, People vs Scott,
26. (1964) 224 CA2d 146, 36 CalRptr 402."

1. "The Keller decision speaks in terms of the "one
2. objective" test, but defendant contends that the logic of
3. the holding is equally applicable if there are multiple
4. objectives so long as there are no objective of the conspiracy
5. separate and different from those charged as substantive offenses,
6. People vs Keller, (1963) 212 CA2d 210, 27 CalRptr 805."

7. New York apparently subscribes to a rule which
8. holds, in part, that if there is an act which itself violates
9. one statute and is also a material element of the violation
10. of another, there can be only a single punishment,
11. People vs Jackson, (1957) 2 NY2d 259, 264."

12.
13. CONCLUSION

14.
15. That the defendant appeal was final on September of
16. 1963, but the case remained open until August 11, 1964, when
17. defendant was committed to state prison (CT August 11, 1964)
18. and that all the time defendant was in further appeal and relieves
19. from the Court and this makes defendant appeal retroactive under
20. the Escobedo Decision Supra and his case should be considered
21. in this relation. I respectfully ask the Court to adopt the points,
22. the summary of evidence, and the authorities, cited in the Exhibit
23. B of #43329 USDC, and I refer to them and make then a part of my
24. contentions here by reference, and respectfully ask the Court to
25. adopt them insofar as they are applicable to the appeal of Cruz.

26. For the reasons stated, the defendant-appellant

1. FEDERICO GONZALEZ CRUZ respectfully asks the Court that the order
2. and judgements appealed from be reversed, and to that end
3. appellant will ever pray.
4.

5. Respectfully submitted,

6. FEDERICO GONZALEZ CRUZ
7. In Propia Persona
8.

9. I certify that, in connection with the preparation of
10. this brief, I have examined Rules 18, 19 and 39 of the United
11. States Court of Appeals for the Ninth Circuit, and that, in my
12. opinion, the foregoing brief is in full compliance with those rules.
13.

14.
15. FEDERICO GONZALEZ CRUZ
16. In Propia Persona
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